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Report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994

Security Council
Fifty-ninth year

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly and to the members of the Security Council the ninth annual report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994, submitted by the President of the International Tribunal for Rwanda in accordance with article 32 of its statute (see Security Council resolution 955 (1994), annex), which states:

> "The President of the International Tribunal for Rwanda shall submit an annual report of the International Tribunal for Rwanda to the Security Council and to the General Assembly."

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Ninth annual report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January And 31 December 1994

Summary

Overview. From 1 July 2003 to 30 June 2004 (referred to hereinafter as "the period under review"), the International Criminal Tribunal for Rwanda (ICTR) delivered five trial judgements involving nine accused. One person was convicted on 15 July 2004. Consequently, 17 judgements, involving 23 accused, have been delivered since the commencement of the first trial in January 1997. Twenty accused have been convicted and three acquitted. In addition, 19 persons are presently on trial. Two single accused trials and one case, involving 4 accused, are scheduled to start in the second half of 2004. By the end of 2004, 25 persons will be on trial, bringing the total number of accused whose trials have been completed or are in progress to 48. Sixteen detainees are awaiting trial. Their cases will start from 2005 onwards, depending on available Trial Chamber capacity.

New trials. Since July 2003, ICTR has commenced five new trials involving 11 accused. Two of these cases, each involving one accused, have been completed. The *Gacumbitsi* trial commenced on 28 July 2003, and judgement was delivered on 17 June 2004. Thirty-seven witnesses were heard over 31 trial days. The *Ndindabahizi* trial started on 1 September 2003, and judgement was rendered on 15 July 2004. Thirty-four witnesses were heard in the course of 27 trial days. In the *Muhimana* trial (one accused), which commenced on 29 March 2004, 19 prosecution witnesses were heard over 20 trial days. These cases confirm the Tribunal's capacity to complete the trial of a single accused within a limited time. Other new trials are the *Bizimungu et al.* case and the *Karemera et al.* case, each involving four accused, which commenced in November 2003.

Completion strategy. The most recent version of the ICTR completion strategy was submitted to the Security Council on 30 April 2004. The Tribunal is on schedule to complete all trials by 2008, as required by Security Council resolution 1503 (2003). It is estimated that, within that time frame, ICTR could complete trials involving between 65 and 70 persons, depending on the progress made in present and future trials. The ongoing trials will be completed during the period from 2005 to 2006. There are 17 indictees and 16 suspects at large, however, fewer will be brought to Arusha: some may never be found and others may be dead. The assistance and cooperation of States are required in the arrest and transfer of these individuals.

The Prosecutor will concentrate on those individuals who are alleged to have been in positions of leadership and to bear the gravest responsibility for the crimes committed. Accused and suspects that are alleged to have been medium to low-level participants in 1994 will be transferred to national jurisdictions, including Rwanda, for trial. Five of the remaining sixteen accused who are currently in detention and

4 of the 17 indictees who are presently at large have been identified for transfer. The decision to transfer a case to a national jurisdiction is a judicial one and will be taken by the trial chambers on a case-by-case basis, bearing in mind the necessity to ensure a fair trial at the national level. There may be a need to strengthen certain national judicial systems. Finally, the Prosecutor has identified a total of 41 individuals for transfer to national jurisdictions for trial. Again, the cooperation and assistance of States are essential to this endeavour.

In order for ICTR to comply with the time frames established in Council resolution 1503 (2003), it must be provided with sufficient resources. Recently, recruitment of new staff was frozen by the Controller because certain Member States had failed to pay their contributions to the ad hoc-Tribunals. It is essential that this situation be resolved as soon as possible.

Ad litem judges. Security Council resolution 1431 (2002) established a pool of ad litem judges and permitted the use of four ad litem judges at any one time. Subsequently, the Council, at the request of ICTR, adopted resolution 1512 (2003) in which it allowed for the use of nine ad litem judges at any one time. By this resolution, the Council also conferred on ad litem judges the competence to adjudicate over pre-trial matters. There are currently five ad litem judges at ICTR. The arrival of these judges made it possible to start four new trials involving 10 accused. Additional ad litem judges will form part of the Trial Chamber sections in the second half of 2004.

Prosecutor. By resolution 1503 (2003), the Security Council established the position of Prosecutor for ICTR. Hassan Bubacar Jallow took office in September 2003. He has identified the workload that the Office of the Prosecutor should carry forward to completion, reviewed the completion strategy of the Office and drawn up an action plan. Concerted efforts are made to arrest fugitives at large. The tracking team has been revamped and greater cooperation sought from countries in which some of the fugitives are known to be located. In order to ensure the implementation of the completion strategy, the Prosecutor has appointed a Completion Strategy Monitoring Committee.

Although the duty station of the Prosecutor is at the seat of ICTR in Arusha, United Republic of Tanzania, there is a more frequent or constant presence of the Prosecutor in Rwanda, the location of the crime and of the Investigations Division of the Office. This has enabled the Prosecutor to exchange ideas with the Rwandan Government on a regular basis and to attend to problems as they emerge. There has also been, as a result of the constant or frequent presence of the Prosecutor in Rwanda, a more in-depth discussion on the transfer of cases to Rwanda. The Prosecutor and the Deputy Prosecutor have relentlessly continued dialogue with the Rwandan Government and with the victims' organizations in Rwanda. This has resulted in the normalization of relations between the Office of the Prosecutor and the Rwandan Government. There has also been greater cooperation between the two institutions at other levels, which has resulted in a greater access to documentary and other information.

Enforcement of sentences. Six convicts are presently serving their sentences in Mali. During the period under review, agreements to enforce sentences handed down by ICTR were concluded with Italy and Sweden. Similar agreements have been concluded with Benin, France, Mali and Swaziland. Negotiations to conclude an agreement with Rwanda are in progress. Member States may wish to conclude similar agreements with the Tribunal.

Visits. During the period under review, approximately 800 guests visited ICTR as a part of 55 delegations. Prominent among the visiting dignitaries were the President of Germany, Johannes Rau, who met with the President of the Tribunal; the President of the Human Rights Commission, Njat Al-Hajjaji; accredited ambassadors of more than 30 countries based in Dar-es-Salaam and in Nairobi; representatives of the European Union; of the United Republic of Tanzanian parliamentarians; Senior Level Officials of the Rwandan Judiciary; and numerous non-governmental organizations.

I. Specific information

A. Office of the President

1. The President of ICTR is Judge Erik Møse (Norway) and the Vice-President is Judge Andrésia Vaz (Senegal).

2. The main administrative activity of the President during the period under review has been the elaboration of the Tribunal's completion strategy. It was first submitted to United Nations Headquarters in July 2003, followed by revised versions submitted in September 2003 and April 2004. On 9 October 2003, the President presented the annual report to the General Assembly and to the Security Council. On the same date, he also introduced the completion strategy to the Security Council as part of the ICTR request to increase the number of ad litem judges that could serve at the Tribunal at any one time. On 29 June 2004, the President presented his assessment of the implementation of the completion strategy to the Security Council, together with the Prosecutor, in conformity with Council resolution 1534 (2004).

3. The President has submitted three reports to the Security Council relating to the progress made in cases that involved judges whose terms of office were extended, pursuant to Council resolution 1482 (2003), to enable them to complete their outstanding work. These judges left ICTR as soon as they had completed their work within the stipulated time frames. Moreover, the President ruled on four applications for review of the Registrar's decisions concerning issues relating to defence counsel; issued a detention order in respect of a convicted prisoner; decided on an application for changes in conditions of detention in respect of one convicted prisoner; and, as a member of the Bureau, ruled on applications from three accused for the disqualification of judges from the *Karemera et al.* trial.

B. Chambers

4. The chambers are composed of 16 permanent judges and a maximum of nine ad litem judges. Nine permanent judges are members of the three trial chambers, supplemented by ad litem judges. Seven permanent judges are members of the Appeals Chamber, with five sitting at any one time.

5. The composition of the Chambers is as follows:

(a) **Trial Chamber I**. Judge Erik Møse (Norway), Judge Jai Ram Reddy (Fiji) and Judge Sergei Alekseevich Egorov (Russian Federation);

(b) **Trial Chamber II**. Judge William Hussein Sekule (United Republic of Tanzania), Judge Asoka de Zoysa Gunawardana (Sri Lanka) and Judge Arlette Ramaroson (Madagascar). Judge Gunawardana retired on 30 June 2004 and a replacement is being appointed;

(c) **Trial Chamber III**. Judge Lloyd George Williams (Saint Kitts and Nevis), Judge Andrésia Vaz (Senegal) and Judge Khalida Rashid Khan (Pakistan). Pursuant to the resignation of Judge Williams on 31 March 2004, the Secretary-General, on 8 April 2004, appointed Sir Charles Michael Dennis Byron (Saint Kitts and Nevis) as permanent judge for the remainder of Judge Williams' term of office. Judge Byron took office on 23 June 2004;

(d) **Appeals Chamber**. Judge Theodore Meron (United States of America), Judge Mohamed Shahabuddeen (Guyana), Judge Fausto Pocar (Italy), Judge Mehmet Güney (Turkey), Judge Inés Mónica Weinberg de Roca (Argentina), Judge Florence Mumba (Zambia) and Judge Wolfgang Schomburg (Germany);

(e) **Ad litem judges**. Judge Solomy Balungi Bossa (Uganda), Judge Flavia Lattanzi (Italy), Judge Lee Gacugia Muthoga (Kenya), Judge Florence Rita Arrey (Cameroon) and Judge Emile Francis Short (Ghana).

Trial Chamber I

6. During the period under review, the Chamber delivered two judgements, conducted three trials, confirmed an indictment, issued a warrant of arrest and conducted three initial appearances. It also held several status conferences with the objective of preparing cases for trial, and adjudicated over pre-trial matters in six cases.

The Prosecutor v. Jean-Bosco Barayagwiza, Ferdinand Nahimana and Hassan Ngeze, referred to as the Media case

7. On 3 December 2003, the Chamber unanimously convicted Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze of conspiracy to commit genocide, genocide, direct and public incitement to commit genocide and crimes against humanity (extermination and persecution). Ferdinand Nahimana and Hassan Ngeze were sentenced to imprisonment for the remainder of their lives. Jean-Bosco Barayagwiza was sentenced to 35 years' imprisonment. Ninety-three witnesses, including 10 expert witnesses, testified over a period of 241 trial days.

The Prosecutor v. Theoneste Bagosora, Gratien Kabiligi, Aloys Ntabakuze, Anatole Nsengiyumva, referred to as the Military I case

8. The trial was transferred to Trial Chamber I on 4 June 2003. Following consultations with the parties, the Chamber decided to continue the trial instead of commencing it de novo. The trial resumed on 16 June 2003, and has been conducted over 172 trial days, with 131 trial days completed during the period under review. In this period, 64 witnesses testified, bringing the number of witnesses that have completed their testimony to 71. The presentation of the prosecution's case is near completion.

The Prosecutor v. Emmanuel Ndindabahizi

9. The trial commenced on 1 September 2003. On 15 July 2004, the Chamber unanimously convicted Emmanuel Ndindabahizi of genocide and crimes against humanity (extermination and murder) and sentenced him to imprisonment for the remainder of his life. During the period under review, the Chamber rendered 37 decisions. The trial was conducted in shifts with the Military I trial.

10. The Chamber also adjudicated over pre-trial matters in six single accused cases. Eighteen decisions were rendered in the cases of *The Prosecutor v. Muhimana*, *The Prosecutor v. Gatete*, *The Prosecutor v. Seromba* and *The Prosecutor v. Simba*. In the case of *The Prosecutor v. Setako*, the Chamber confirmed an indictment and issued a warrant of arrest. Initial appearances were

held in *The Prosecutor v. Rugambarara*, *The Prosecutor v. Muhimana* and *The Prosecutor v. Simba*.

Trial Chamber II

11. The Chamber delivered two judgements in two single accused cases, conducted trials in two cases involving 10 accused, held three initial appearances and ruled on pre-trial motions in one case.

The Prosecutor v. Juvénal Kajelijeli

12. On 1 December 2003, the Chamber unanimously convicted Juvénal Kajelijeli of genocide, direct and public incitement to commit genocide and a crime against humanity (extermination) and, by a majority, acquitted him of a crime against humanity (rape). He was sentenced to imprisonment for the remainder of his life for genocide, to imprisonment for the remainder of his life for a crime against humanity (extermination) and to 15 years' imprisonment for direct and public incitement to commit genocide, all three sentences to run concurrently. The trial in this case was conducted over 78 days. During this period, the Chamber heard 14 prosecution witnesses and 28 defence witnesses. Ten written decisions were rendered.

The Prosecutor v. Jean de Dieu Kamuhanda

13. On 22 January 2004, the Chamber convicted Jean de Dieu Kamuhanda of genocide and a crime against humanity (extermination). He was sentenced to imprisonment for the remainder of his life for each of those crimes, both sentences to run concurrently. The trial in this case was conducted over 83 trial days. During this period, 28 prosecution witnesses and 36 defence witnesses testified.

The Prosecutor v. Pauline Nyiramasuhuko, Arsène Shalom Ntahobali, Sylvain Nsabimana, Alphonse Nteziryayo, Joseph Kanyabashi, Elie Ndayambaje, referred to as the Butare case

14. Owing to the expiration of the term of office of Judge Maqutu on 24 May 2004, the trial was postponed until proceedings pursuant to Rule 15 bis of the Rules of Procedure and Evidence were completed. On 15 July 2003, the two remaining judges decided that it was in the interest of justice to continue the trial with a substitute judge. This decision was confirmed on appeal (see para. 42 below). On 5 December 2003, Judge Bossa joined the Bench after she had certified that she had familiarized herself with the records of the trial proceedings. The trial resumed on 26 January 2004. During the period under review, the Chamber rendered 26 written decisions and 14 oral decisions. The prosecution's case is near completion.

The Prosecutor v. Casimir Bizimungu, Justin Mugenzi, Prosper Mugiraneza and Jérôme Bicamumpaka, referred to as Bizimungu et al.

15. The trial in this case commenced on 6 November 2004 and proceeded in two phases: from 6 November to 15 December 2003 and from 19 January to 25 March 2004. The third phase of the trial was adjourned owing to the early retirement of the presiding judge, Judge Gunawardana, for health reasons. The trial resumed on 7 June 2004 before a newly constituted Chamber comprising Judges Khan (presiding), Muthoga and Short. Thirty-seven prosecution witnesses have testified over 88 trial days. The prosecution is expected to conclude the presentation of its

case by the end of 2004. During the period under review, the Chamber issued 51 written decisions and 12 substantive oral decisions.

The Prosecutor v. Augustin Ndindiliyimana, François-Xavier Nzuwonemeye, Innocent Sagahutu and Augustin Bizimungu et al., referred to as the Military II case

16. Pre-trial proceedings have been held. On 26 March 2004, the Chamber granted the prosecution's motion for leave to amend the indictment. On 31 March 2004, the prosecution filed the amended indictment and further initial appearances and a status conference were held on 30 April 2004. During the period under review, six decisions were rendered. The trial involving the four accused is scheduled to commence on 20 September 2004. The Chamber is also seized of four other cases at the pre-trial stage: *The Prosecutor v. Nzabirinda, The Prosecutor v. Nsengimana, The Prosecutor v. Renzaho* and *The Prosecutor v. Bisengimana.*

Trial Chamber III

17. During the period under review, the Chamber delivered judgements in two cases involving four accused, conducted trials in four cases involving nine accused, held two initial appearances and adjudicated over pre-trial matters in eight cases.

The Prosecutor v. André Ntagerura, Samuel Imanishimwe and Emmanuel Bagambiki, referred to as the Cyangugu case

18. On 25 February 2004, the Chamber acquitted André Ntagerura and Emmanuel Bagambiki of all charges and convicted Samuel Imanishimwe of genocide, crimes against humanity (extermination, murder, imprisonment and torture) and serious violations of common article 3 of the Geneva Conventions (torture and cruel treatment). Imanishimwe was sentenced to 27 years' imprisonment. The trial opened on 18 September 2000 and closed on 15 August 2003. Forty-one prosecution witnesses testified over 73 trial days. Eighty-three witnesses testified on behalf of the three accused during 86 trial days.

The Prosecutor v. Sylvestre Gacumbitsi

19. On 17 June 2004, the Chamber convicted Sylvestre Gacumbitsi of genocide, crimes against humanity (extermination and rape) and acquitted him of a crime against humanity (murder). The trial commenced on 28 July 2003. Thirty-seven witnesses testified. The Chamber delivered 70 decisions, including 10 in writing.

The Prosecutor v. Edouard Karemera, André Rwamakuba, Matthieu Ngirumpatse and Joseph Nzirorera, referred to as Karemera et al.

20. Following 23 pre-trial decisions during the period under review, the trial commenced on 27 November and proceeded until 11 December 2003. The Chamber heard eight witnesses and issued 18 oral and 3 written decisions. The trial could not resume as scheduled on 19 January 2004 because the Appeals Chamber granted the prosecution's appeal against a decision to deny leave to amend the indictment (see para. 36 below). On 13 February 2004, the Trial Chamber amended the indictment. An initial appearance was held on 23 February 2004 to enable the accused to plead to the new charges.

21. When the trial resumed on 29 March 2004, the defence filed motions for the disqualification of all three judges for reasons of alleged bias. On 14 May 2004, Judge Vaz withdrew from the case in order to dispel any appearance of bias and to avoid any questions relating to the integrity of the trial process at a subsequent stage. On 17 May 2004, the Bureau dismissed motions for disqualification of the judges. During this phase of the trial, five witnesses testified. The Chamber rendered 34 oral and 14 written decisions. On 16 July 2004, the remaining two judges decided to continue the trial with a substitute judge under Rule 15 bis.

The Prosecutor v. Mikaeli Muhimana

22. The trial commenced on 29 March 2004 and the prosecution closed its case on 30 April 2004, after having called 19 witnesses. The defence case is scheduled to commence on 16 August 2004. During the period under review, the Chamber delivered 4 written and 23 oral decisions.

23. The Chamber conducted pre-trial proceedings in eight cases involving 10 accused: *The Prosecutor v. Bikindi, The Prosecutor v. Kabuga, The Prosecutor v. Karera, The Prosecutor v. Muvunyi, The Prosecutor v. Hategekimana and Nizeyimana, The Prosecutor v. Rukundo, The Prosecutor v. Rutaganira* and *The Prosecutor v. Zigiranyirazo*. Twenty-one decisions were rendered in these cases. The Chamber took one deposition in the case of *The Prosecutor v. Hategekimana and Nizeyimana* and held two initial appearances in the cases of *The Prosecutor v. Bikindi* and *The Prosecutor v. Zigiranyirazo*.

Appeals Chamber

24. During the period under review, four appeals from judgement and 33 interlocutory appeals were filed with the ICTR Appeals Chamber. This represents a significant increase over the previous reporting period, during which three appeals from judgement and eight interlocutory appeals were filed. At the end of the period under review, seven interlocutory appeals and seven appeals from judgement were pending.

(a) Appeals against judgements

25. *The Prosecutor v. Gérard Ntakirutimana and Elizaphan Ntakirutimana.* Appeals have been filed by the prosecution and Gérard and Elizaphan Ntakirutimana against the judgement of 21 February 2003, which convicted Gérard and Elizaphan Ntakirutimana of genocide and sentenced them to imprisonment for 25 years and 10 years, respectively. Following extensive pre-appeal filings and procedures, the appeals were heard in Arusha, from 7 to 9 July 2004.

26. *The Prosecutor v. Eliézer Niyitegeka.* Eliézer Niyitegeka filed an appeal against the judgement of 16 May 2003, which convicted him of genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, and crimes against humanity (murder, extermination and other inhumane acts) and sentenced him to imprisonment for the remainder of his life. The appeal hearings were held in Arusha, on 21 and 22 April 2004. On 9 July 2004, the Appeals Chamber affirmed the trial judgement.

27. *The Prosecutor v. Laurent Semanza.* Both parties appealed the judgement of 15 May 2003, which convicted Laurent Semanza of complicity in genocide, crimes

against humanity (extermination, rape, torture and murder) and sentenced him to imprisonment for 25 years. On 12 December 2003, Semanza's motion for the admission of additional evidence was dismissed in part. However, the evidence of one witness satisfied the requirements of Rule 115 of the Rules.

28. *The Prosecutor v. Juvénal Kajelijeli.* Juvénal Kajelijeli appealed against the judgement of 1 December 2003 (see para. 12 above). On 17 December 2003, the Pre-Appeal Judge granted in part the appellant's motion for an extension of time. On 23 January 2004, the Appeals Chamber denied the prosecution's motion for acceptance of its notice of appeal out of time, stating that its failure to file a timely notice was not excused by "good cause".

29. *The Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze.* Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze filed appeals against the judgement of 3 December 2003 (see para. 7 above). On 19 December 2003, following requests for extensions of time, the Pre-Appeal Judge ordered Nahimana and Barayagwiza to file their notices of appeal and appellants' briefs within stipulated time limits. On 6 February 2004, the Pre-Appeal Judge placed Ngeze on the same schedule as Nahimana and Barayagwiza.

30. *The Prosecutor v. Jean de Dieu Kamuhanda.* Jean de Dieu Kamuhanda appealed the judgement of 22 January 2004 (see para. 13 above). On 8 March 2004, the pre-appeal judge ordered the appellant to file his notice of appeal no later than 30 days from the communication of the French translation of the judgement, and his appellant's brief no later than 75 days from the filing of the notice of appeal. The pre-appeal judge also directed the Registrar to serve the French version of the judgement on the appellant as soon as practicable.

31. *The Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe.* Emmanuel Imanishimwe and the prosecution appealed the judgement of 25 February 2004 (see para. 18 above).

(b) Interlocutory appeals

32. *Butare case.* Five of the six accused appealed against the Trial Chamber's decision to continue the case with a substitute judge under Rule 15 bis (see para. 14 above). In its decision of 24 September 2003, the Appeals Chamber found that the Trial Chamber had jurisdiction to decide whether the new Rule 15 bis applied to the present proceedings; that the Trial Chamber did not err in finding that the application of the new Rule 15 bis to the proceedings did not prejudice the rights of the accused; and that the Trial Chamber did not err in concluding that it was in the interests of justice that the proceedings should continue with a substitute judge. The Trial Chamber could recall a witness on a particular issue if, in its view, the issue involved a matter of credibility requiring that the substitute judge assess the witness' demeanour.

33. *The Prosecutor v. Emmanuel Rukundo.* On 17 October 2003, the Appeals Chamber dismissed the certified appeal of Emmanuel Rukundo against the Trial Chamber's décision relative à la requête en exceptions préjudicielles, of 26 February 2003. The Appeals Chamber confirmed that an indictment can refer to facts, conduct or criminal acts that occurred prior to 1994, insofar as they do not in themselves constitute separate accusations and are only presented in support of offences committed between 1 January and 31 December 1994. In the same case, the Appeals

Chamber made several decisions concerning the Trial Chamber III decision on the defence motion to fix a date for the commencement of the trial of Father Emmanuel Rukundo or, in the alternative, to request his provisional release, of 18 August 2003.

34. *The Prosecutor v. Aloys Ntabakuze*. On 28 October 2003, the Appeals Chamber dismissed Aloys Ntabakuze's certified appeal against the Trial Chamber's decision on motions by Ntabakuze for severance and to establish a reasonable schedule for the presentation of prosecution witnesses, of 9 September 2003, which denied severance. The Trial Chamber had the discretion to determine whether it was necessary to hold separate trials in order to avoid a conflict of interest that might cause serious prejudice, or to protect the interests of justice. It had also acted within its discretion on the issue of scheduling of witnesses.

35. *The Prosecutor v. Théoneste Bagosora, Anatole Nsengiyumva, Aloys Ntabakuze and Gratien Kabiligi*. On 19 December 2003, the Appeals Chamber dismissed two appeals filed by the prosecution against the Trial Chamber's written decision of 18 September 2003, its oral ruling of 22 September 2003, and its oral ruling of 2 October 2003. The appeals concerned the exclusion of evidence relating to alleged acts of the accused predating the temporal jurisdiction of the Tribunal. The Appeals Chamber found that the Trial Chamber had correctly stated that evidence of prior criminal acts of the accused was inadmissible for the purpose of demonstrating a general propensity or disposition to commit the crimes charged. Also, it affirmed that the Trial Chamber had broad discretion in directing the course of the proceedings in accordance with its fundamental duty to ensure a fair and expeditious trial, and that it might choose to exclude otherwise relevant and probative evidence where its prejudicial effect would adversely affect the fairness or expeditiousness of the proceedings.

36. *The Prosecutor v. Edouard Karemera, André Rwamakuba, Mathieu Ngirumpatse and Joseph Nzirorera*. The Appeals Chamber was seized of the Prosecutor's appeal against the Trial Chamber III decision on denying leave to file an amended indictment, of 8 October 2003. On 19 December 2003, the Appeals Chamber, by a majority, vacated the Trial Chamber's decision and remitted it to the Trial Chamber for consideration as to whether, in the light of the Appeals Chamber's observations, the amended indictment was otherwise in compliance with Rule 50. In its decision, the Appeals Chamber held, inter alia, that, in exercising its discretion under Rule 50, the Trial Chamber had given weight to extraneous or irrelevant considerations, namely the newness of the amended indictment and the fact that a prior amendment had previously taken place. The Appeals Chamber also noted the likely effect that the proposed amendment would have on the overall fairness of proceedings.

37. By a decision of 8 April 2004, the Appeals Chamber dismissed the appeals of Mathieu Ngirumpatse and Joseph Nzirorera in which they argued that the Appeals Chamber's decision of 19 December 2003 declared void the indictment in this case or rendered it a nullity, such that the trial proceedings that had occurred prior to that date should be declared invalid and the trial begun anew. The Appeals Chamber declared that its decision did not deprive the Trial Chamber of its jurisdiction to conduct proceedings or affect the validity of the indictment.

38. By a decision of 9 June 2004, the Appeals Chamber dismissed the appeal filed by Nzirorera in which he sought review by the Appeals Chamber of the sanctions imposed on him by the Trial Chamber pursuant to Rule 73(F). The Appeals

Chamber noted that neither the Statute nor the Rules provided for a right of appeal from sanctions imposed pursuant to Rule 73(F) of the Rules, and that a Rule 73(F) sanction was not a criminal sanction. It therefore found that there was no basis for granting a right of appeal in the case at hand.

39. Nzirorera also appealed against the Trial Chamber's decision of 29 March 2004, rejecting his preliminary motion in which he contended that a trial on new charges added to the indictment in 2004 would exceed the power of the Security Council under Chapter VII of the Charter of the United Nations. On 10 June 2004, a bench of three judges found that the appeal was not capable of satisfying the requirements of Rule 72(D) and therefore dismissed it. Its decision did not preclude the appellant from seeking certification of an appeal on the issue or from raising it in an appeal from judgement.

40. Nzirorera appealed against a Trial Chamber decision on the grounds that the International Tribunal lacked jurisdiction (a) to apply the extended form of joint criminal enterprise liability to internal armed conflicts, in violation of the principle of *nullum crimen sine lege*, and (b) to try the appellant on a charge of violence to life, health and physical and mental well-being of persons because such an offence was not part of customary international law, even though it was listed in article 4 (a) of the Statute of the Tribunal. On 11 June 2004, a bench of three judges, by majority, decided that the appeal did not satisfy the requirements of Rule 72(D), and that the appeal was accordingly dismissed.

41. By a decision of 11 June 2004, the Appeals Chamber dismissed the appeals of Nzirorera and Karemera in which they argued that a decision authorizing an amendment to an indictment was a review of the indictment within the meaning of article 18 of the Statute and could not therefore be undertaken by ad litem judges pursuant to article 12 quater of the Statute. The Appeals Chamber observed that ad litem judges enjoy the same powers as the permanent judges of the Tribunal, with the exception of matters specifically enumerated in paragraph 2 of article 12 quater of the Statute. The Chamber found that ad litem judges, sitting as members of a trial chamber, are empowered to participate in the consideration of and decision on a motion for leave to amend an indictment pursuant to Rule 50, and that that issue was independent of the question as to whether, in deciding to grant leave to amend an indictment, the Trial Chamber should apply the standards set out in Rules 47(E) and 47(F).

42. On 11 June 2004, a bench of three judges decided that the appeal of Karemera challenging jurisdiction did not satisfy the requirements of Rule 72(D). The appeal was accordingly dismissed.

43. By a decision of 21 June 2004, the Appeals Chamber allowed the appeals of Rwamakuba, Karemera and Ngirumpatse challenging the decision of the remaining judges to continue the trial with a substitute judge, following the withdrawal of a judge pursuant to Rule 15 bis. The Appeals Chamber found that the remaining judges erred in law by deciding to continue the trial without giving the accused an opportunity to be heard. The matter was remanded to the remaining judges for reconsideration in the light of any submissions of the parties with regard to the question as to whether it was in the interests of justice to continue the trial with a substitute judge.

44. *The Prosecutor v. Casimir Bizimungu, Justin Mugenzi, Jerôme Bicamumpaka and Prosper Mugiraneza*. On 12 February 2004, the Appeals Chamber dismissed the prosecution's appeal against the Trial Chamber's decision denying leave to amend the indictment. It was recalled that Rule 50 assigns the decision to allow an amendment to an indictment to the discretion of the Trial Chamber and that appellate intervention was warranted only in limited circumstances. It was considered that the prosecution had not met its burden of showing that the Trial Chamber had failed to consider any of the relevant factors placed before it, or that its conclusion was so unreasonable as to compel appellate intervention in the matter. The Appeals Chamber concluded that the Trial Chamber's dismissal of the motion was reasonable and lay within the Trial Chamber's discretion.

45. On 25 June 2004, the Appeals Chamber dismissed the prosecution's interlocutory appeals against two decisions of the Trial Chamber that excluded prosecution evidence on the grounds that it went to matters outside the scope of the indictment. It was considered that the prosecution had not identified any error on the part of the Trial Chamber in the exercise of its discretion to exclude the evidence of the witnesses.

46. *The Prosecutor v. Aloys Simba*. On 4 June 2004, a bench of three judges dismissed in part the appeal against the Trial Chamber's decision on the preliminary defence motion regarding defects in the form of the indictment. The Appeals Chamber recalled that decisions on preliminary motions are without interlocutory appeal save in the case of motions challenging jurisdiction and, in other cases, where certification has been granted by the Trial Chamber. The Bench found that the appellant had the right under Rules 72(B)(i) and (D)(iii) of the Rules to appeal on the basis of his third ground of appeal, which asserted that the amended indictment charged conduct outside the temporal jurisdiction of the Tribunal.

C. Office of the Prosecutor

47. During the period under review, the Office of the Prosecutor continued to present the prosecution case in ongoing trials and implemented the completion strategy (see para. 2 above). The beginning of January 2004 saw the establishment of the Appeals Section of the Office. Until the appointment of a new Prosecutor, ICTR and the International Tribunal for the Former Yugoslavia (ICTY) shared a common appeals section. Most of the newly created positions in the Appeals Section have now been filled and the Section is working well. During the period under review, it dealt with four new appeals, involving seven accused persons.

48. With the increased number of trials going on at the same time, translation or the provision of translation services to the Office, continues to be a major challenge. In this regard, the Office notes with appreciation the report of the Office of Internal Oversight Services on the review of the Office of the Prosecutor at the International Criminal Tribunals for Rwanda and the Former Yugoslavia (see A/58/677) and expresses the hope that resources will be made available to enable it to engage the services of uncertified translators.

49. The Office has pursued efforts to reduce its vacancy rate. In spite of challenges, the period under review has seen a significant reduction in the vacancy rate. In January 2004, the General Assembly created 6 new vacant posts in the

immediate Office of the Prosecutor and 11 in the newly established Appeals Section. Most of these posts have been filled.

D. Registry

50. In the light of the completion strategy, management reforms and organizational restructuring were undertaken in the immediate Office of the Registrar and in some key sections of the Judicial and Legal Services Division and the Division of Administrative Support Services. These reforms were aimed at enhancing operational efficiency while maximizing the use of limited human resources. Important changes were the re-amalgamation of the witnesses and victims support mechanisms of the Registry into a single section and the remerging of the management of the United Nations Detention Facility with that of the Defence Counsel to form the Defence Counsel and Detention Management Section.

51. Administrative efforts were made to streamline and automate the workflow, and develop staff capacity to meet the requirements of an increasing workload. Communication networks, including video links, were reinforced. Controls in assets management and billing systems were strengthened and security tightened in strategic locations of the Tribunal's operations.

Office of the Registrar

External Relations and Strategic Planning Section

52. The External Relations and Strategic Planning Section has continued its work to increase the awareness and interest in the work of ICTR. There has been increased cooperation with States, relevant institutions and non-governmental organizations. The Tribunal signed agreements on enforcement of sentences with France, Italy and Sweden. The Joint Facilitation Committee of Senior Representatives of the Host Country and ICTR held two meetings in Arusha within the framework of the implementation of the Host Country Agreement. The cooperation between ICTR and ICTY has been strengthened and expanded to include the Special Court for Sierra Leone and the International Criminal Court. The exchange of information and experience and the undertaking of joint activities have contributed to the strengthening of international criminal justice.

53. Senior officials of ICTR visited Rwanda in order to strengthen the cooperation with the Rwandan Government and increase awareness of and support for the Tribunal's work by survivors' groups and other relevant partners. Through the Tribunal's outreach programme, the External Relations and Strategic Planning Section has targeted specific groups, in particular the Rwandan grass-roots population. This has implied a sustained communication programme using a range of techniques, including seminars, radio broadcasts, publications, speaking engagements, and research fellowships for Rwandan law students and jurists.

54. The Information Centre (Umusanzu mu Bwiyunge) in Kigali has continued to serve as the focal point of the outreach programme. The Centre was inaugurated in September 2000 and is visited by about 100 persons daily, including students, journalists, civil servants, judges and lawyers, as well as ordinary citizens. Approximately 100 institutions based in Rwanda receive ICTR public information

documents through the Centre. A fully equipped computer network terminal is available in its library. The Centre has a collection of video archives of the trial proceedings before ICTR and an increasing range of documents in Kinyarwanda. Press conferences, briefings and films on ICTR are held frequently.

55. Given the priority accorded to radio as the most important medium in Rwanda, the outreach programme has supported Rwandan journalists who broadcast on a daily basis from Arusha. These journalists are from Office rwandais de l'information and the Ministry of Justice. Through this strategy, ICTR, in collaboration with these two institutions, aims to fill the information gap about the Tribunal's work in the Rwandan hinterland and grass-roots population.

56. Rwandan journalists are resorted to for the broadcast of judgements and the coverage of new trials. Radio and television journalists are provided with audio or video cassettes of hearings for broadcast by Radio Rwanda or Rwandan television. Judgements are broadcast live in Rwanda by means of a dedicated telephone link to Radio Rwanda, and interviews are provided whenever necessary. The Tribunal has given full support to the international independent media organization — Internews — for the production of documentaries on Rwandan post-genocide justice. In partnership with the Hirondelle Press Agency and the British Broadcasting Corporation, training programmes in ICTR court procedures, international criminal law, legal journalism and ethics have been organized for Rwandan journalists.

57. An annual programme of research awards for students from the National University of Rwanda is now in its fourth year. Each year, six students from the University, sponsored by ICTR, undertake eight weeks of internship and legal research at Tribunal. Training seminars for Rwandan judges are under preparation.

58. A public awareness campaign has been sustained by means of seminars, exhibitions, press conferences and publications at the ICTR web site. Journalists from Africa and international news agencies have been invited to cover important events. The External Relations and Strategic Planning Section organized press briefings in Nairobi and Arusha on a regular basis. All of these activities have given greater visibility to ICTR. In this connection, the European Union recently agreed to support ICTR by funding eight projects aimed at strengthening the Tribunal's managerial and operational capacity. The cost of implementation of these projects will amount to over €1 million.

Gender Advisory Unit

59. The recruitment in June 2003 of a Gender Adviser in the Office of the Registrar provided the impetus for more strategic action in gender-sensitive areas. In coordination with relevant sections, the Gender Advisory Unit has contributed to the establishment of policy guidelines aimed at encouraging a more conducive environment for the effective participation of victims and witnesses in the judicial proceedings. Physical and psychological support measures have been provided to victims, and especially to victims of rape and sexual assault summoned to testify before ICTR.

60. The Registrar has recently recruited three medical experts for ICTR in Kigali, comprising a gynaecologist, a psychologist and a nurse-psychologist, to improve access to and monitoring of medical support for victims and witnesses, including in

relation to the management of HIV/AIDS. A laboratory technician is being recruited to assist with the medical operations in support of witnesses in Rwanda.

61. The Unit has contributed in an advisory capacity to the implementation of the Financial Regulations and Rules of the United Nations relating to staff management on gender issues. The Unit has pursued gender balance in the recruitment and promotion of qualified staff within the Central Review Board. The current representation of female staff compared to male staff in ICTR is 35 per cent. The aim is to reduce the current gender gap at the Professional level by at least 5 per cent by 2005. The strategy has focused on sensitizing programme managers to target suitably qualified female candidates and also to make employment accessible to qualified spouses of staff members.

Legal Library and Reference Section

62. During the period under review, the Library continued to provide its clientele with the information they need in the course of their assignments. The recruitment of an Associate Librarian in the Outreach Information Centre in Kigali was an important step.

63. During the period under review, ICTR released the second edition of its CD-ROM on basic documents and case law, covering the period from 2001 to 2002. The Library has also worked with the Université Libre de Bruxelles on the compilation of ICTR jurisprudence to be included in the ICTR official report of orders, decisions and judgements, to be published by Bruylant. To keep staff aware of new additions to the catalogue, the Library continued to produce the ICTR Quarterly Bibliography and the monthly list of new acquisitions. The Library participated in the work of the Steering Committee for the Modernization and Integrated Management of United Nations Libraries and provided advice in the setting up of the Library at the Special Court for Sierra Leone. The Library also organized training sessions to improve librarians' skills with regard to information management software and to make staff members in the various sections proficient in the use of online databases.

Judicial and Legal Services Division

Court Management Section

64. The coordination teams of the Court Management Section have continued to facilitate the smooth functioning of the trial chambers and the Appeals Chamber. This has entailed supporting the increased number of court proceedings generated by the shift system in the trial chambers. The challenges resulting from the shift system have been met by means of the Section's education programme, in-house designed training packages on the management of the judicial database, and the development of paralegal computer skills. All support staff of the Section have been involved in a move to build the multitasked workforce essential in a context of increased workloads and limited resources.

65. There have been further improvements in the production and dissemination of transcripts of court proceedings. The more general daily availability of draft transcripts in English and French has facilitated the ability of ICTR to cope successfully with the accelerated pace of the proceedings. Training and refresher courses in court reporting technology have allowed court reporters to develop their

technical skills and softened the mismatch between the increased workload and the understaffing of the unit.

66. Significant improvements have been achieved in both the records-keeping and dissemination of judicial documents at ICTR by the provision of an up-to-date database of the judicial records intended for public access through the Tribunal's web site. A protocol previously designed in cooperation with the Archives and Records Management Section at United Nations Headquarters in New York for the long-term preservation of the Tribunal's records upon completion of its mandate is being readied for implementation as the ongoing processing of the ICTR audio-visual collection progresses.

67. Partnerships have been developed and maintained with court reporting training institutes and professional associations in order to develop projects aimed at facilitating the replenishment of the Tribunal's roster of court reporters eligible for recruitment and at designing a programme for junior court reporters at ICTR.

Defence Counsel and Detention Management Section

68. During the period under review, 16 counsel were assigned by the Defence Counsel and Detention Management Section to represent indigent accused, bringing the number of counsel currently assigned by ICTR to 88. Eight counsel were withdrawn for reasons constituting exceptional circumstances.

69. An important task has been the rationalization of the legal aid scheme, in the light of concerns expressed by Member States with regard to the rising costs of the scheme, the provision of support for defence teams, the maintenance of an appropriate and effective regime for the Tribunal's Detention Facility and investigations of claims of indigence by detainees. The Section has had to balance the reality of budget constraints against the need to avoid prejudice to indigent accused. Based on the recommendation of an external expert in the area of defence fees assessment, new mechanisms were put in place pending the implementation of a system that would ensure such assessment by an independent team. Consultations with ICTY on this matter are ongoing. The new mechanisms, coupled with the training of the staff of the Section on taxing defence costs have reduced the financial burden of the legal aid programme and made the defence fees and expenses more predictable and easier to budget and justify. However, a more vigorous assessment of the time spent on activities charged by defence team members led them to strike from 28 to 30 January 2004. Discussions with defence counsel were facilitated by the president and judges.

70. A financial investigator for legal aid issues has been recruited. The Registry has defined the means below which an accused can be considered indigent or partially indigent and has drawn up a formula under which ICTR would be able to determine the contributions to be made by an accused who partially qualifies for legal aid. It is expected that this will reduce the financial burden of the legal aid programme and increase the efficiency of investigations.

Witnesses and Victims Support Section

71. During the period under review, the Witnesses and Victims Support Section has overseen the movement of 129 prosecution witnesses and 42 defence witnesses. Moreover, during the period from 15 March to 30 June 2004, approximately 100 witnesses were summoned to give evidence. In conjunction with the Court Management Section and the Audio Visual Unit, the Section is setting up a best practice work ethic in order to ensure that all material that could subsequently lead to the disclosure of the identity of a protected witness is removed before the material is made accessible to the public.

72. The Section has intensified its post-trial monitoring activities in the host countries in which witnesses reside. Many prosecution and defence witnesses residing in Rwanda enjoyed a wide range of assistance aimed at improving their medical, psychological and physical rehabilitation.

73. The Section has pursued its policy of building a framework for cooperation with many of the countries in which witnesses may reside. Progress was made with Belgium, France and Denmark in this regard. The Section equally enjoyed excellent cooperation from the regional agencies of the United Nations High Commissioner for Human Rights in Benin, Cameroon, Kenya, South Africa, Togo and Zambia. They assisted ICTR in facilitating the movement and protection of witnesses. The Section successfully negotiated with all relevant Governments the provision of the temporary travel documents that would enable witnesses to travel to and from Arusha.

Language Services Section

74. During the period under review, the Language Services Section has continued to provide interpretation, translation and reproduction services to the chambers, the parties and the Registry. Fourteen of the fifteen vacant interpreter/translator posts were filled as a result of recruitment efforts organized in certain countries in anticipation of the arrival of all nine ad litem judges and the introduction of the shift system. With resources from the ICTR trust fund, the Section organized an in-house, eight-month simultaneous interpretation training course in Kinyarwanda for four trainees.

Administrative Support Services Division

75. As at 10 March 2004, ICTR had 919 staff members against 1,039 authorized posts with 120 vacant posts. The current vacancy rate of the Tribunal is therefore 11 per cent, of which 8 per cent represents vacant posts provided for in the budgetary allotment for the previous biennium, and 3 per cent represents vacant posts provided for in the allotment for the biennium 2004-2005. It is important to note that the vacancy rate of about 21 per cent at the beginning of the biennium 2002-2003 represented 196 vacant posts. The drop in vacancy rate to 11 per cent was a result of a proactive recruitment policy carried out despite major logistical constraints. In terms of geographical representation, 90 countries are represented at ICTR, which has one of the highest diversity ratios in the United Nations Secretariat.

76. Staff development continues to be a strongly supported area of human resources management. A key ICTR training strategy is to assign priority to training courses that benefit a large number of staff. At the end of February 2004, 99 interns

and 34 legal researchers from 38 countries participated in the ICTR internship and legal researchers programmes. The legal researchers were fully sponsored through the ICTR trust fund.

77. The telecommunications project of ICTY and ICTR, which was started in September 2002, is a joint project to increase cooperation and collaboration between the two tribunals. In October 2003, a permanent and fully operational telecommunications network was established among The Hague, Arusha and Kigali in order to meet the need for videoconferencing. The project also includes the transmission of ICTR courtroom proceedings, at broadcast quality, from trial chambers in Arusha to the ICTR office in Kigali.

78. The building management services completed the construction of a remote data storage space for courtroom audio/video records at the end of 2003. An area for a continuous electronic data-processing backup server system was also established.

II. Recommendations

79. The Tribunal recommends that:

(a) It continue to receive sufficient resources to enable it to complete its work within the time frames stipulated by the Security Council in resolutions 1503 (2003) and 1534 (2004);

(b) Member States remain receptive to discussions relating to the possible transfer of cases to their respective jurisdictions for trial;

(c) Member States provide assistance for the arrest and transfer of the accused and suspects who remain at large.

III. Conclusion

80. The Tribunal is committed to bringing to justice those persons who are the alleged architects of the genocide and violations of international humanitarian law committed in Rwanda in 1994. In this process, ICTR will bring justice to victims of the massive crimes that were committed, and establish a record of facts that can aid reconciliation in Rwanda. It will also leave a legacy of international jurisprudence that can guide future courts and deter the future commission of such grave crimes. The Tribunal will require sufficient resources and the continued cooperation, assistance and support of Member States to enable it to fulfil its mandate within the time frames stipulated by the Security Council in resolution 1503 (2003).

81. The Tribunal acknowledges the support and assistance it has received from the Secretary-General of the United Nations, and expresses its appreciation to Member States for their continuing interest in and support of its activities.